

REMARKS/ARGUMENTS

Reconsideration of this patent application is respectfully requested in view of the foregoing amendments and the following remarks.

1) The Examiner has objected to claim 1. Claim 1 has been amended to overcome this objection.

2) The Examiner has rejected claims 1-19 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,174,768 to Sanders et al in view of U.S. Patent No. 5,338,618 to Zarola and U.S. Patent No. 2,538,778 to Halpin.

Claim 1 has been amended to further distinguish claim 1 from the above cited Patents. For example, Sanders discloses a luggage cart which has rails which do not extend towards a forward section of the cart. Claim 1 has been amended to state the following:

wherein said forward rails are angled so that when said portable collapsible enclosure is placed on said frame, said forward rails extend from a first position adjacent to a bottom region of said portable collapsible enclosure to a second position above said portable collapsible enclosure, in a manner to prevent said portable collapsible enclosure from falling off of said frame when said frame and enclosure are in use.

Support for this amendment is found on page 9 lines 11 and 12 of the specification and in FIG. 3.

This feature is not shown in Sanders. In particular, the rails 22 shown in FIG. 1 of Sanders extend from a back region up to an upper section of the upright rails. In addition, as shown in FIG. 2 of Sanders, the rails or tray 30 extend along a lower portion and then curve up at a back end to couple to a lower portion of vertical rails 12. In both of these designs, these rails 22 or tray 30 do not provide the same lateral stabilization to the enclosure that the design of the present invention as claimed in claim 1 provides.

In addition, the Examiner has stated that Zarola teaches an enclosure having a flexible netting material. It is respectfully submitted that the portable house unit 10 of Zarola does not contain a mesh material or a flexible netting material covering at least approximately one half of a section of the enclosure as stated in amended claim 1. Instead, the end or run unit 12 does contain this mesh unit as described in column 2, lines 33 and 40 and in column 4 lines 37 and 38. The portable housing 10 of Zarola does disclose a limited portion that may be made of mesh

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in the form of a window. However, based upon the appearance of this window in FIG. 1 and the written description of Zarola, it is respectfully submitted that this mesh material does not cover nearly as much area as with the enclosure of the present invention.

It is respectfully submitted that this difference is important because with a pet stroller, a pet would want a substantial portion of the enclosure to be in the form of a transparent or mesh type material so that this pet could enjoy the surroundings during a walk.

Claim 1 also recites a fabric cover:

covering approximately one half of the length of the enclosure...

This feature is also not shown in Zarola.

In addition, the features of the mesh or flexible netting material covering approximately one half of the length of the enclosure and the feature of the fabric covering approximately one half of the length of the enclosure have also not been shown in Halpin. Furthermore, it is respectfully submitted that there

is no suggestion or motivation to combine the above cited references together.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

See Also In Re Fine, 837 F.2d 1596, 1598-99 (Fed Cir. 1988).

As outlined above, the combination of all of the references above do not teach all of the claimed features.

In addition, it is respectfully submitted that there is no suggestion to combine the above cited references together either explicitly or implicitly.

Sanders discloses a luggage carrier. This luggage carrier does not contain side rails to protect against the falling off of

enclosures. Instead, Sanders was designed so that the different carts can be made stackable or nestable as outlined in column 2 lines 19-25. It is respectfully submitted in following with this design feature or goal, one would not design a frame having the rails constructed in the manner of claim 1 of the present invention to prevent an enclosure from falling off. In turn, one would not wish to combine this type of frame or cart with an enclosure for carrying pets because these pets would then easily fall off this style frame.

In addition, Zarola does not teach the combination of the enclosure with a frame as disclosed in claim 1. Instead, Zarola teaches the combination of an enclosure with a run unit. Furthermore, Halpin also does not teach combining that enclosure with the frame disclosed in Sanders or the frame as claimed in claim 1.

It is respectfully submitted that there is also no reasonable expectation of success when combining the disclosures of Sanders, Zarola and Halpin, because of the numerous design features that are present in the device as claimed in claim 1.

First, the advantages of the invention as claimed in claim 1, include side rails that are used to prevent the portable collapsible enclosure from falling off. In addition, with the enclosure there is an open section covered by mesh or flexible netting which allows the animal or pet to have a full viewing area when taken out on a walk. This area is sufficiently large such that it covers approximately one half of the length of the enclosure. With an area that large, an animal would have at least a 270 degree viewing area to see forward, and on both sides. In this way, an animal would not have to strain itself to see out of a small window.

The remaining portion includes a fabric covering which also covers approximately one half of the length of the enclosure. This area provides a sufficient area for an animal to shield itself from sun, or precipitation. It also provides the animal with sufficient privacy when it wishes to sleep or offer protection from perceived predators.

It is respectfully submitted that the above advantages provide considerable benefits to a pet enclosed within the

enclosure which is transported on the frame as claimed in claim 1.

It is respectfully submitted that even after combining the disclosures of the above references these disclosures would have to be modified significantly to even approach the features of the present invention. In addition, given the significant advantages provided by these features, it is respectfully submitted that considerable practical experimentation would have to be conducted before reaching the practical beneficial effects of the design of the present invention.

Therefore, it is respectfully submitted that claim 1 as amended, and dependent claims 2-3, 5-11 and 13-19 are patentable over the above cited references taken either singly or in combination.

3). The Examiner has rejected claims 20 and 21 as being unpatentable over Sanders in view of Zarola.

Claims 20 and 21 have been amended to overcome the above cited patents, to add the following passage:

wherein said rails are angled up so that when said portable collapsible enclosure is placed on said frame, said rails extend from a first position adjacent to a bottom region of said portable collapsible enclosure to a second position above said portable collapsible enclosure, in a manner to prevent said portable collapsible enclosure from falling off of said frame when said frame and enclosure are in use.

Support for this amendment can be found in FIG. 3 and on page 9, lines 10 and 11 of the specification. It is respectfully submitted that this feature is an important feature and function of the present invention. Without stabilizing side rails on either side of the enclosure, a sharp turn or movement, or a curb or pothole could unsettle the enclosure and cause it to tip over and off of the frame. This result would render any frame without side rails dangerous for all inhabitants of an enclosure riding on the frame.

Furthermore, as stated above, Zarola only discloses a carrier having a limited section or window made from a mesh or flexible netting material. With the present invention the fabric covers approximately one half of the length of the enclosure and the flexible netting material covers approximately the other half. For the above reasons, it is respectfully submitted that this design difference is significant and which adds significant beneficial features to the enclosure design of the invention as

claimed in claim 20. Therefore, it is respectfully submitted that claim 20 is patentable over the above cited references taken either singly or in combination.

4) The Examiner has rejected claim 1, under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,174,768 to Sanders et al in view of U.S. Patent No. 5,335,618 to Zarola and U.S. Patent No. 2,538,778 to Halpin and in further view of Ludolph.

Ludolph discloses a pet transport system which includes an enclosure having a fabric covered section and a mesh section. Ludolph does not teach that this enclosure is removable from the frame, and there is no showing of any handles on this enclosure. In addition, the enclosure does not have any doors as described in the present invention and as claimed in claim 1, instead with Ludolph, the mesh material is made from a ferrous material that is coupled to the remaining enclosure via a magnet. In addition it is respectfully submitted that there is no suggestion for

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combining this disclosure with the disclosures of Sanders, Zarola or Halpin.

It is respectfully submitted that because of the amendment to claim 1 cited above and for the reasons stated above, claim 1 is now patentable over the above cited references taken either singly or in combination.

5) The Examiner has rejected claims 20 and 21 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,335,618 to Zarola in view of U.S. Patent No. 1,561,658 to Mosier.

As discussed above, Zarola does not disclose a portable collapsible enclosure having a flexible netting or mesh material covering approximately half of the length of the enclosure.

In addition, with respect to Mosier, claims 20 and 21 have been amended to distinguish these claims from Mosier.

Mosier does not disclose side rails. Claims 20 and 21 have been amended so that with respect to the rails:

...said rails are angled up so that when said portable collapsible enclosure is placed on said frame, said rails extend from a first position adjacent to a bottom region of said portable collapsible enclosure to a second position above said portable collapsible enclosure, in a manner to prevent said portable collapsible enclosure from falling off of said frame when said frame and enclosure are in use.

This feature is not disclosed in Mosier. It is respectfully submitted that this feature is an important design feature of the present invention as claimed in claim 1, because it prevents the enclosure from falling off of the frame, the result of which may injure a pet housed in the frame.

6) The Examiner has rejected claim 20 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,335,618 to Zarola in view of U.S. Patent No. 1,561,658 to Mosier as applied above and in further view of Ludolph.

It is respectfully submitted that because Zarola does not disclose the flexible netting covering approximately half the length of the portable collapsible enclosure, Mosier, does not

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disclose rails to prevent the portable collapsible enclosure from falling off of the frame, and because Ludolph does not disclose a portable collapsible enclosure, there is no suggestion to combine these references together to arrive at the design of the present invention.

7) The Examiner has rejected claims 20 and 21 as being unpatentable over U.S. Patent No. 5,113,793 to Leader in view of U.S. Patent No. 5,335,618 to Zarola.

Leader does not disclose that the rails are used to

... prevent said portable collapsible enclosure from falling off of said frame when said frame and enclosure are in use.

Instead, Leader discloses a support tray 19 that has borders 5 on each side of the carriage 20 to keep the enclosure 15 in place as well as a front holding bar 13 to keep the enclosure from sliding forward.

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In addition, this tray 19 is described as a metal tray or other strong material to support the weight of the enclosure.

It is respectfully submitted that this design is of such heavy construction that it would be impractical for the purposes of the design of the present invention. It is respectfully submitted that a heavy metal wire cage and a heavy frame having a solid metal tray would be impractical and would render the design of Leader to be unacceptable to most users. Furthermore, the square cage would be impractical to carry with a top handle because this type of a square cage would have edges that would either cut or dig into the user's leg as the user carried the cage.

Instead, with the design of the present invention, the hoops form an enclosure with a rounded upper surface, which would then not cut or dig into the user's leg. In addition, much of the enclosure is enclosed by either a fabric or a flexible netting material which creates a softer interaction than a hard metal cage and an enclosure that is much more light weight. Therefore, it is respectfully submitted that the design of the present invention is much improved over the design of Leader.

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It is respectfully submitted that there is no suggestion to combine the reference of Leader with Zarola because the frame in Leader is designed to receive a wire frame cage that is preferably "box like" as stated in column 3, line 9.

In addition, as stated above, Zarola only discloses combining the disclosure with an attached run unit and not with a stroller or stroller frame.

Furthermore, Zarola does not disclose that there is a mesh portion covering approximately one half of the length of the enclosure as claimed in claims 20 and 21.

Therefore, it is respectfully submitted that claims 20 and 21 are patentable over the above cited references taken either singly or in combination.

8) The Examiner has rejected claim 20 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,113,793 to Leader in view of U.S. Patent No. 5,335,618 to Zarola as applied to claims

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20 and 21 above and in further view of U.S. Patent No. 6,584,937 to Ludolph.

It is respectfully submitted that because Leader does not disclose rails to prevent the portable collapsible enclosure from falling off of the frame, Zarola does not disclose the flexible netting covering approximately half the length of the portable collapsible enclosure, and because Ludolph does not disclose a portable collapsible enclosure, there is no suggestion to combine these references together to arrive at the design of the present invention.

Therefore, it is respectfully submitted that claim 20 is patentable over the above cited references taken either singly or in combination.

In addition, claim 22 has been added. Support for the features of claim 22 are found in the specification on page 5 lines 15-18.

While it is respectfully submitted that the above cited claims are patentable over the above cited references alone,

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enclosed are copies of two affidavits, one by Lise King, the inventor, attached as attachment A, and another by Charles George a purchaser of the product covered by the above cited claims and attached as Attachment B. In addition, enclosed is a design award which has been awarded to the inventor for "innovation and creativity" relating to the design of the "Kittywalk Fifth Avenue Pet Stroller. This design award was awarded by the Editors of "Cat Fancy" magazine, wherein this award is attached as Attachment C.

In ex parte proceedings before the Patent and Trademark Office, an applicant must show that the claimed features were responsible for the commercial success of an article if the evidence of nonobviousness is to be accorded substantial weight. See In re Huang, 100 F.3d 135, 140, 40 USPQ2d 1685, 1690 (Fed. Cir. 1996).

It is respectfully submitted that the reasons for Mr. Charles George purchasing the product are because the design included the following elements:

a removable carrier; the carrier having a rounded enclosure with a frame having hoops; a flexible netting material being coupled to the hoops; at least one door being releasably secured to one end of the enclosure; and at least one fabric cover covering a portion of the enclosure such as approximately one half of the enclosure..

It is respectfully submitted that these features are found in the claims, and as such, it is respectfully submitted that the remaining claims are patentable.

In Pentech International, Inc. v. Hayduchok (DC SnY) 18 U.S.P.Q. 2d 1337, the court found non-obviousness based upon commercial success because sales reached more than \$1 million in its first four years on the market.

It is respectfully submitted that the affidavit by Ms. Lise King, the inventor, includes a statement the device being sold by Kittywalk, has achieved over one million in sales since 2003 which is within the first four years.

Courts have found commercial success in factual situations that are similar to the present situation. In Superior Merchandise Co. v. MGI Wholesale, Inc. (DC Ela) 51 USPQ 2d 1935, the court found that secondary considerations found that a design patent was not obvious including the fact that the plaintiff patent owner sold its entire inventory of patented product and since the record shows that other competitors have copied that design.

In addition in Ashai America Inc. V. MFERI, (DC SNY) 51 USPQ 1154, the court found that from the start, when the invention was marketed it enjoyed "immediate and substantial commercial success not given to prior thermoplastic piping systems" and also stated that since the plaintiff had adduced substantial evidence that the invention was copied by defendants as soon as they were presented with it. See also Generally Specialty Composites v. Cabot Corp. 845 F.2d 981,991 (Fed Cir. 1988); and also Uniroyal, Inc. V. Rudkin-Wiley Corp., 837 F.2d 1044, 1053-54.

As stated above, the evidence shows that there was commercial success that could be considered "immediate and

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substantial" since the device had achieved commercial sales of over one million dollars within the first four years. In addition this affidavit by Lise King also states that there is evidence of copying of the device as shown by attachments D and E which respectively disclose the device being sold by the inventor and a device being copied from the competitors of the inventor and being sold in the marketplace.

Given the above cited evidence, it is respectfully submitted that the remaining claims are patentable over the above cited references taken either singly or in combination.

In view of the foregoing, it is respectfully requested that the claims be allowed and that this case be passed to issue.

Applicant respectfully request that a timely Notice of Allowance be issued in this case.

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Respectfully submitted,

Lise KING

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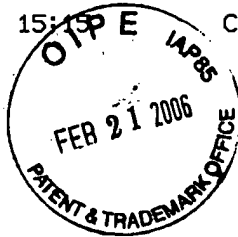
Attorneys for the Applicants

Enclosures: Attachment A, Lise King Declaration; Attachment B, Charles George Declaration, Attachment C, Award, Attachment D, Copy of device being sold by inventor, Attachment E picture of device being sold by competitor.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 on February 17, 2006.

William Collard
William Collard

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: LISE KING
SERIAL NO.: 10/825,272 EXAMINER: A. Valenti
FILED: April 15, 2004 GROUP: 3643
TITLE: Pet Stroller

DECLARATION UNDER 37 CFR 1.132 OF LISE KING

MAIL STOP AMENDMENT

Hon. Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I, LISE KING, declare the following:

1. I am the named inventor of the invention disclosed and claimed in United States Patent Application Serial No. 10/825,272 for a Pet Stroller, filed on April 15, 2004. This invention is a continuation-in-part of US Patent Application Serial No. 10/663,465 filed on September 16, 2003 which was based on provisional application no. 60/411,366 filed on September 17, 2002.

2. I am a co-owner of Kittywalk Systems, Inc., a manufacturer of Pet Strollers that fall within the scope of the claims in my above-referenced patent application.

3. In the pet industry, there has been a long-felt need for a device that can be used to safely enclose and transport small pets and give them a chance be exposed to the fresh air in a stroller, yet be simple to install and be easy to assemble as well.

4. Prior to developing the above-mentioned invention, I have not been aware of any pet strollers. The Pet Stroller sold under the Kittywalk name includes the following features: a removable carrier; the carrier having a rounded enclosure with a frame having hoops; a flexible netting material being coupled to the hoops; at least one door being releasably secured to one end of the enclosure; and at least one fabric cover covering a portion of the enclosure such as approximately one half of the enclosure.

5. Pet Strollers manufactured by Kittywalk Systems, and marketed under the name Kittywalk Pet Stroller have enjoyed considerable commercial success since their inception in April 2003.

6. Kittywalk Systems, Inc. has made over \$1 million in sales of the Kittywalk Pet Stroller described above since 2003.

7. Kittywalk Pet Strollers are featured in the following mail order catalogs:

Hammacher Schlemmer

In The Company Of Dogs

HSN Home Interiors

Drs. Foster & Smith (Retail Pet Supplies)

Skymall

8. The Kittywalk Pet Strollers are currently being stocked in 1200-1500 pet stores throughout the United States.

9. The Kittywalk Pet Stroller has been featured on the following television programs:

NBC News Philadelphia

Good Morning America

KTLA TV Morning News

David Letterman

WROC-TV

60 Minutes

The View

10. The Kittywalk Pet Stroller has received considerable print publicity, as articles featuring the Kittywalk Pet Stroller have appeared in the Minneapolis Star Tribune, Pet Set, Dan's Papers, and Animal Wellness. In addition the Pet Stroller has been exhibited at the New York Historical Society Museum in New York City last spring.

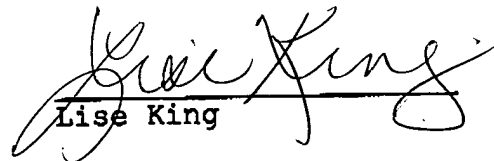
11. The Kittywalk Pet Stroller is a revolutionary product that has enjoyed considerable commercial success, and has fulfilled a long-felt need in the pet industry for a safe, easy way to let house pets enjoy the outdoors. It is respectfully submitted that this Pet Stroller is great for trips to the vet, for urban

dwellers, and it is wonderful for pets with hip and joint problems.

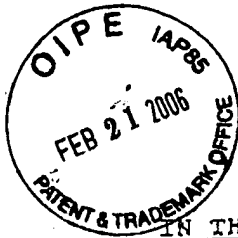
12. Since the initial sales of this Kittywalk pet stroller there have been numerous attempts to copy the design of the pet stroller by competitors and then sell a competing product in the market. Evidence of this copying is attached.

13. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereto.

Dated: 2/16/05


Lise King

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PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: LISE KING
SERIAL NO.: 10/825,272 EXAMINER: A. Valenti
FILED: April 15, 2004 GROUP: 3643
TITLE: Pet Stroller

DECLARATION UNDER 37 CFR 1.132 of Charles George

MAIL STOP AMENDMENT
Hon. Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I, Charles George, declare the following:

1. I have worked in the general field of product distribution for the past thirty five (35) years. I am currently employed by Pet Rageous Products, 11 Blarhard Road, Burlington, MA 01803 as the President. I have worked in this position for the past three (3) years.

2. In my current position, I am in charge of selecting items for distribution and sale in other stores such as: Target, Petco, PetSmart, Petland and many other large and small pet retailers or pet retail chains.

3. I have not received any benefit or payment for the statements being made in this declaration.

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4. In the pet industry, there has been a long-felt need for a device that can be used to safely enclose and transport small pets and give them a chance be exposed to the fresh air in a stroller, yet be simple to install and be easy to assemble as well.

5. Prior to purchasing the above-mentioned invention, I have not been aware of any pet strollers on the market other than pet strollers having the following characteristics: a removable carrier; the carrier having a rounded enclosure with a frame having hoops; a flexible netting material being coupled to the hoops; at least one door being releasably secured to one end of the enclosure; and at least one fabric cover covering a portion of the enclosure such as approximately one half of the enclosure. These pet strollers can safely and easily enclose small pets in an outdoor environment, provide them with a comfortable environment, yet be easy to install and disassemble as well.

6. The Pet Stroller marketed under the name of the Kittywalk Pet Stroller and purchased by my company Pet Rageous Products has the following features: a stroller having a removable carrier; the carrier having a rounded enclosure with a frame having hoops; a flexible netting material being coupled to the hoops; at least one door being releasably secured to one end of the enclosure; and at least one fabric cover covering a portion of the enclosure such as approximately one half of the enclosure.

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7. The reasons for purchasing this product relate to the above features listed so that the reasons for purchasing the stroller are because the stroller has a removable carrier with the carrier having a rounded enclosure with a frame having hoops. On the carrier is a flexible netting material being coupled to the hoops. The carrier includes at least one door being releasably secured to one end of the enclosure. The carrier also has at least one fabric cover, covering a portion of the enclosure such as approximately one half of the enclosure.

8. I have purchased over \$100,000.00 worth of these above identified strollers in late 2005.

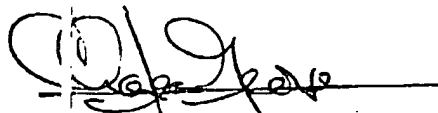
9. The Kittywalk Pet Strollers are currently being stocked in over 1500 stores including 1200 Target stores throughout the United States, and marketed under the Target name of the "Boots & Barkley -Rain Shine Stroller" which are the recipients of our sales and distribution.

10. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United

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States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereto.

Dated: 2/1/2006


Charles George

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CERTIFICATE OF ACHIEVEMENT

The Editors of **CAT FANCY** magazine proudly present a

2005 Editors' Choice Award

for innovation and creativity

to

Midnight Pass Inc.

for

Kittywalk Fifth Ave. Pet Stroller

Congratulations!

Susan Logan

Susan Logan, Editor

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